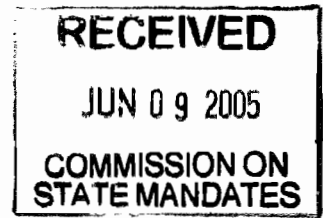


BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA



)
) Case No. 04-RL-4469-08
RECONSIDERATION OF PRIOR DECISION)
ON:) COMMENTS OF MADELYN,
) SCHLAEPFER, PH.D COUNTY
Government Code Sections 54952, 54954,2,) OF STANISLAUS TO DRAFT
54957.1, and 54957.7 as amended by Statutes 1993,) STAFF ANALYSIS
Chapters 1136, 1137, 1138 and Statutes 1994,) <i>BROWN ACT REFORM</i>
Chapter 32; and,)
)
Directed by Statutes 2004, Chapter 316,)
Section 3, Subdivision (c) (Assem. Bill)
No. 2851),)
)
Effective August 25, 2004)
)

I, Madelyn Schlaepfer, Ph.D., state:

I am the Assistant Director for Quality and Compliance for Behavioral Health and Recovery, for the County of Stanislaus. In my position, I am the Mental Health Plan administrator for the County of Stanislaus. In my position, I have attempted to obtain all state mandate reimbursement for those activities performed in my department allowed by law.

I have just recently been informed that the Commission on State Mandates is reconsidering the prior decision it rendered, which found that Brown Act Reform was a partially reimbursable mandated program. I have also been informed that this test claim was required to be reconsidered by Chapter 316, Statutes of 2004. I am also informed

that the draft staff analysis on this reconsideration is recommending to the Commission on State Mandates that advisory bodies not have their costs for compliance with the *Brown Act* reimbursed. In so stating, Commission's staff opines: "However, staff finds the conclusion, that advisory committees created by the local entity are entitled to reimbursement, is *not* legally correct under current law since the state has not mandated the creation of these advisory bodies." [Draft Staff Analysis, page 17; emphasis in original.]

While I cannot speak for all of the advisory bodies in existence within the County of Stanislaus, I can speak to the Mental Health Advisory Board. This particular advisory body is mandated by state law, as follows.

First of all, all counties, or counties which have joint powers agreements to discharge the responsibilities of mental health within their jurisdictions, are required to establish and maintain a community mental health service pursuant to Welfare and Institutions Code, Section 5602:

5602. The board of supervisors of every county, or the boards of supervisors of counties acting under the joint powers provisions of Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code shall establish a community mental health service to cover the entire area of the county or counties. Services of the State Department of Mental Health shall be provided to the county, or counties acting jointly, or, if both parties agree, the state facilities may, in whole or in part, be leased, rented or sold to the county or counties for county operation, subject to terms and conditions approved by the Director of General Services.¹

¹ Note that this provision authorizes counties to jointly establish a community mental health service to discharge the responsibilities of this act. Presumably, this provision is to enable counties to share costs and thus provide services in a more economic fashion.

The state then requires that each and every community mental health service establish a mental health advisory board. Not only are such advisory boards mandated, but their composition is required by law. This requirement is set forth in Welfare and Institutions Code, Section 5604, as follows:

5604. (a) (1) Each community mental health service shall have a mental health board consisting of 10 to 15 members, depending on the preference of the county, appointed by the governing body, except that boards in counties with a population of less than 80,000 may have a minimum of five members. One member of the board shall be a member of the local governing body. Any county with more than five supervisors shall have at least the same number of members as the size of its board of supervisors. Nothing in this section shall be construed to limit the ability of the governing body to increase the number of members above 15. Local mental health boards may recommend appointees to the county supervisors. Counties are encouraged to appoint individuals who have experience and knowledge of the mental health system. The board membership should reflect the ethnic diversity of the client population in the county.

(2) Fifty percent of the board membership shall be consumers or the parents, spouses, siblings, or adult children of consumers, who are receiving or have received mental health services. At least 20 percent of the total membership shall be consumers, and at least 20 percent shall be families of consumers.

(3) (A) In counties under 80,000 population, at least one member shall be a consumer, and at least one member shall be a parent, spouse, sibling, or adult child of a consumer, who is receiving, or has received, mental health services.

(B) Notwithstanding subparagraph (A), a board in a county with a population under 80,000 that elects to have the board exceed the five-member minimum permitted under paragraph (1) shall be required to comply with paragraph (2).

(b) The term of each member of the board shall be for three years.

The governing body shall equitably stagger the appointments so that approximately one-third of the appointments expire in each year.

(c) If two or more local agencies jointly establish a community mental health service under Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the mental health board for the community mental health service shall consist of an additional two members for each additional agency, one of whom shall be a consumer or a parent, spouse, sibling, or adult child of a consumer who has received mental health services.

(d) No member of the board or his or her spouse shall be a full-time or part-time county employee of a county mental health service, an employee of the State Department of Mental Health, or an employee of, or a paid member of the governing body of, a mental health contract agency.

(e) Members of the board shall abstain from voting on any issue in which the member has a financial interest as defined in Section 87103 of the Government Code.

(f) If it is not possible to secure membership as specified from among persons who reside in the county, the governing body may substitute representatives of the public interest in mental health who are not full-time or part-time employees of the county mental health service, the State Department of Mental Health, or on the staff of, or a paid member of the governing body of, a mental health contract agency.

(g) The mental health board may be established as an advisory board or a commission, depending on the preference of the county.

To make sure that there is no issue as to whether such mental health advisory board must comply with the *Brown Act*, Welfare and Institutions Code, Section 5604.1 speaks to that issue directly:

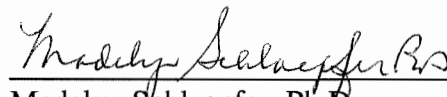
5604.1. Local mental health advisory boards shall be subject to the provisions of Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, relating to meetings of local agencies.

The provisions of the statute then go on to state the duties of the board, the requirements of its bylaws, etc.

Thus, while the draft staff analysis allows for reimbursement of those local bodies that are required by state or federal law, there is a specific exclusion for all advisory bodies created by the local agency without regard to whether they may also be required by state or federal law.

Accordingly, I would request that the draft staff analysis be amended to allow for reimbursement for those advisory bodies which are required by state or federal law. This would also avoid confusion for those bodies, such as mental health advisory boards, that are advisory in nature, but required under state law.

I declare under penalty of perjury the foregoing is true and correct, and that this declaration is executed this 8 day of June, 2005, at Modesto, California.



Madelyn Schlaepfer, Ph.D.
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and Compliance
Behavioral Health and Recovery
County of Stanislaus